

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION [8]

IN THE MATTER OF:)

RICHARDSON FLAT TAILINGS)

United Park City Mines Company)
Respondent)

Proceeding Under Sections 104, 122(a),)
and 122(d)(3) of the Comprehensive)
Environmental Response, Compensation,)
and Liability Act as amended)
(42 U.S.C. Sections 9604, 9622(a),)
9622(d)(3)).)

U.S. EPA Docket
No. _____

ADMINISTRATIVE ORDER ON CONSENT
FOR FOCUSED REMEDIAL INVESTIGATION/FEASIBILITY STUDY

I. INTRODUCTION

1. This Administrative Order on Consent ("Consent Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and _____ ("Respondents"). The Consent Order concerns the preparation of, performance of, and reimbursement for all costs incurred by EPA in connection with a focused remedial investigation and feasibility study ("RI/FS") for the Richardson Flat Tailings Superfund Site (the "Site"), located near Park City, Utah, as well as recovery of past response costs.

II. JURISDICTION

2. This Consent Order is issued under the authority vested in the President of the United States by sections 104, 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Sections 9604, 9622(a), 9622(d)(3) (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to the EPA Region 8 Director of the Superfund Remedial Response Program, Office of Ecosystem Protection and Remediation (the "Director") by EPA Delegation No. 14-14-C.

Kushner
w/ corrections
6/6/00

Colin
w/cons
6/6/00

PHOEBE
8 ENE-T
6/06/00

3. The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. In any action by EPA or the United States to enforce the terms of this Consent Order, Respondent consents to and agrees not to contest the authority or jurisdiction of the Director to issue or enforce this Consent Order, and agrees not to contest the validity of this Consent Order or its terms.

III. PARTIES BOUND

4. This Consent Order shall apply to and be binding upon EPA and shall be binding upon Respondents, their agents, successors, assigns, officers, directors and principals. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or corporate status of the Respondents or of the facility or Site shall alter Respondents' responsibilities under this Consent Order. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondent with any provision of this Order shall not excuse or justify noncompliance by any other Respondent(s).

5. The Respondents shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. Respondents shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Consent Order, within 14 days after the effective date of this Consent Order or the date of retaining their services, whichever is later. Respondents shall condition any such contracts upon satisfactory compliance with this Consent Order. Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Consent Order and for ensuring that their subsidiaries, employees, contractors, consultants, subcontractors, agents and attorneys comply with this Consent Order.

IV. STATEMENT OF PURPOSE

6. In entering into this Consent Order, the objectives of EPA and the Respondents are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site or facility, by conducting a focused remedial investigation; (b) to determine and evaluate alternatives for remedial action (if any) to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site or facility, by conducting a focused feasibility study; (c) to recover response and oversight costs incurred by EPA with respect to this Consent Order; and (d) to recover past response costs.

7. The activities conducted under this Consent Order are subject to approval by EPA and shall provide all appropriate necessary information for the RI/FS, with the exception of the baseline risk assessment performed by EPA, and for a record of decision that is consistent with CERCLA and the National Contingency Plan (NCP), 40 C.F.R. Part 300. The activities conducted under this Consent Order shall be conducted in compliance with all applicable EPA guidances, policies, and procedures.

V. FINDINGS OF FACT

8. The Site (CERCLIS ID # UTD980952840) is located approximately three and one-half miles northeast of Park City, Summit County, Utah. The Site is a former mine tailings impoundment and covers approximately 160 acres immediately southeast of the junction of U.S. Highway 40 and Utah State Highway 248. The Site is situated in a broad valley and is surrounded by low hills. The area is primarily grassland. The western edge of the tailings impoundment is located approximately 500 feet east of Silver Creek. Silver Creek is a tributary to the Weber River and is classified by the State of Utah as a cold water fishery, although the viability of that fishery is unknown at this time. An area of wetlands is located between the tailings impoundment and Silver Creek. The surrounding area is relatively isolated with little development within a one mile radius. Tailings were first placed at the Site prior to 1950. Tailings disposal continued intermittently through 1982, with several modifications and enlargements of the pile occurring. Since 1982, the site has been inactive, although United Park City Mines has taken various actions intended to mitigate any potential impacts on human health and the environment including fencing the Site and covering the tailings pile with clean soil.

9. Heavy metals, including arsenic, cadmium, lead, and zinc, are present in the tailings at the Site, as well as in surface water within the irrigation ditch on the Site, and in some shallow ground water wells at the Site. Silver Creek contains elevated levels of heavy metals, though the exact impact of the Site on Silver Creek still remains to be established. The presence of hazardous substances at the Site has been documented in various EPA investigations, including the Site Inspection Analytical Results Report for Richardson Flat Tailings (Ecology and Environment, 1985) and the Removal Assessment Final Report (Ecology and Environment, 1993).

10. The primary, potential contaminant migration pathways for the Site, include, but are not limited to: (1) release to surface water and discharge to Silver Creek; (2) release to ground water and discharge of that ground water to Silver Creek or to wells; and (3) direct contact with tailings, contaminated soils, or contaminated sediments. Releases to surface water and ground water have been repeatedly documented.

11. The heavy metals found at the Site are known to cause a variety of health effects in humans and in animals. In humans, lead is known to cause cognitive defects in young children. Arsenic is a

known carcinogen. Metals in sulfide compounds, as they are found in the tailings impoundment, may be less soluble and therefore may have a relatively lower toxicity than those found in elemental form. However, of most concern at the Site is the effect of heavy metals on water quality in Silver Creek. Silver Creek, both upstream and downstream of the Site, does not meet water quality standards established by the State. The levels of heavy metals in Silver Creek, specifically zinc, are hazardous to cold water fish such as trout and limit their reproduction. These metals may also have adverse effects on aquatic and terrestrial food chains.

12. In accordance with Section 105 of CERCLA, the Site was originally proposed to the National Priorities List (NPL) on June 24, 1988. Due to scoring issues and comments received during the public comment period, the Site was removed from consideration in February 1991. Using the revised Hazard Ranking System (Update 12), the Site was re-proposed to the NPL on February 7, 1992. The Site has not yet been listed on the NPL.

13. Respondents for this Consent Order are

14. Respondents are *(basis of potential liability)*.

15. No prior response or enforcement actions have been taken at the site other than investigation.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

16. The Site is a "facility" as defined in section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

17. Wastes and constituents thereof at the Site, identified in paragraph 9 are "hazardous substances" as defined in section 101(14) of CERCLA, 42 U.S.C. Section 9601(14), or constitute "any pollutant or contaminant" that may present an imminent and substantial danger to public health or welfare under section 104(a)(1) of CERCLA.

18. The presence of hazardous substances at the Site or the past, present or potential migration of hazardous substances currently located at or emanating from the Site, constitute actual and/or threatened "releases" as defined in section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

19. Respondents are "person(s)" as defined in section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

20. Respondents are responsible parties under sections 104, 107 and 122 of CERCLA, 42 U.S.C. Sections 9604, 9607 and 9622.

21. The actions required by this Consent Order are necessary to protect the public health or welfare or the environment, are in the public interest, 42 U.S.C. Section 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. Sections 9604(a)(1), 9622(a), and will

expedite effective remedial action and minimize litigation, 42 U.S.C. Section 9622(a).

VII. NOTICE

22. By providing a copy of this Consent Order to the state, EPA is notifying the state of Utah that this Consent Order is being issued and that EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by the Consent Order.

VIII. WORK TO BE PERFORMED

23. All work performed under this Consent Order shall be under the direction and supervision of qualified personnel. Within 30 days of the effective date of this Order, and before the work outlined below begins, the Respondents shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such work. The qualifications of the persons undertaking the work for Respondents shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Consent Order is contingent on Respondents' demonstration to EPA's satisfaction that Respondents are qualified to perform properly and promptly the actions set forth in this Consent Order. If EPA disapproves in writing of any person's technical qualifications, Respondents shall notify EPA of the identity and qualifications of the replacement(s) within 30 days of the written notice. If EPA subsequently disapproves of the replacement(s), EPA reserves the right to terminate this Consent Order and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondents. During the course of the RI/FS, Respondents shall notify EPA in writing of any changes or additions in the personnel used to carry out such work, providing their names, titles, and qualifications. EPA shall have the same right to approve changes and additions to personnel as it has hereunder regarding the initial notification.

24. Respondents shall conduct activities and submit deliverables as provided by the attached "Statement of Work for Focused RI/FS with attached RI/FS Workplan", dated May 25, 2000 (the "Workplan"), which is incorporated by reference, for the development of the RI/FS. All such work shall be conducted in accordance with CERCLA, the NCP, and EPA guidance including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01), "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-05) and guidances referenced therein, and guidances referenced in the Workplan, as may be amended or modified by EPA. The general activities that Respondent are required to perform are identified below, followed by a list of deliverables. The tasks that Respondents must perform are described more fully in the Workplan and guidances. The activities and deliverables identified below are developed as provisions in the Workplan and shall be developed as provisions in the sampling and analysis plan, and shall be submitted to EPA as provided. All work performed under this Consent Order

shall be in accordance with the schedules herein, and in full accordance with the standards, specifications, and other requirements of the Workplan and sampling and analysis plan, as initially approved or modified by EPA, and as may be amended or modified by EPA from time to time. For the purposed of this Consent Order, day means calendar day unless otherwise noted in the Consent Order.

A. Task I: Scoping. EPA determines the site-specific objectives of the RI/FS and devises a general management approach for the Site, as stated in the attached Workplan. Respondents shall conduct the remainder of scoping activities as described in the attached Workplan and referenced guidances. At the conclusion of the project planning phase, Respondents shall provide EPA with the following deliverables:

1. Sampling and Analysis Plan. Within sixty (60) days of the effective date of this Consent Order, Respondents shall submit to EPA the sampling and analysis plan. This plan shall consist of a field sampling plan ("FSP") and a quality assurance project plan ("QAPP"), as described in the Workplan and guidances. If EPA disapproves of or requires revisions to the sampling and analysis plan, in whole or in part, Respondents shall amend and submit to EPA a revised sampling and analysis plan which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments. Upon approval by EPA, the sampling and analysis plan shall be incorporated by reference into this Consent Order.

2. Site Health and Safety Plan. Within sixty (60) days of the effective date of this Consent Order, Respondents shall submit to EPA the site health and safety plan.

B. Task II: Community Relations Plan. EPA will prepare a community relations plan, in accordance with EPA guidance and the NCP. Respondents shall provide information supporting EPA's community relations programs.

C. Task III: Site Characterization. Following EPA approval or modification of the sampling and analysis plan, Respondents shall implement the provisions of Work Plan and the sampling and analysis Plan to characterize the Site. Respondents shall complete site characterization within seventeen (17) months of EPA approval or modification of the sampling and analysis plan. Respondents shall provide EPA with analytical data within forty-five (45) days of each sampling activity, in an electronic format (i.e., computer disk) showing the location, medium and results. Respondents shall notify EPA in writing within 7 days of completing field activities. During site characterization, Respondents shall provide EPA with the following deliverable, as described in the Workplan:

1. Technical Memorandum on Modeling of Site Characteristics. Where Respondents propose that modeling is appropriate, within 150 days of the initiation of site characterization, Respondents shall submit a technical memorandum on modeling of site characteristics, as described

in the Workplan. If EPA disapproves of or requires revisions to the technical memorandum on modeling of site characteristics, in whole or in part, Respondents shall amend and submit to EPA a revised technical memorandum on modeling of site characteristics which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

D. Task IV: Draft Focused Remedial Investigation Report. Within seventy-five (75) days of receipt, Respondents shall submit a draft focused remedial investigation report consistent with the Workplan and sampling and analysis plan. If EPA disapproves of or requires revisions to the focused remedial investigation report, in whole or in part, Respondents shall amend and submit to EPA a revised focused remedial investigation report which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

E. Task V: Treatability Studies. Based on information available at this time and the contemplated remedial objectives for the Site, as well as knowledge from other similar sites, treatability studies may not be required for the Site. However, if EPA determines, based on new information collected during the RI, that treatability studies are required, Respondents shall conduct treatability studies and will provide EPA with the deliverables listed below. Respondent may invoke the Dispute Resolution Process set forth in Section XVIII of this Consent Order concerning EPA's determination regarding the need for treatability studies.

1. Identification of Candidate Technologies Memorandum. This memorandum shall be submitted within one year of the effective date of this Consent Order. If EPA disapproves of or requires revisions to the technical memorandum identifying candidate technologies, in whole or in part, Respondents shall amend and submit to EPA a revised technical memorandum identifying candidate technologies which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

2. Treatability Testing Statement of Work. If EPA determines that treatability testing is required, within ninety (90) days thereafter, Respondents shall submit a treatability testing statement of work.

3. Treatability Testing Work Plan. Within thirty (30) days of submission of the treatability testing statement of work, Respondents shall submit a treatability testing work plan, including a schedule. If EPA disapproves of or requires revisions to the treatability testing work plan, in whole or in part, Respondents shall amend and submit to EPA a revised treatability testing work plan which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

4. Treatability Study Sampling and Analysis Plan. Within

forty-five (45) days of the identification of the need for a separate or revised QAPP or FSP, Respondents shall submit a treatability study sampling and analysis plan. If EPA disapproves or requires revisions to the treatability study sampling and analysis plan, in whole or in part, Respondents shall amend and submit to EPA a revised treatability study sampling and analysis plan which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

5. Treatability Study Site Health and Safety Plan. Within thirty (30) days of the identification of the need for a revised health and safety plan, Respondents shall submit a treatability study site health and safety plan.

6. Treatability Study Evaluation Report. Within sixty (60) days of completion of any treatability testing, Respondents shall submit a treatability study evaluation report as provided in the Workplan and work plan. If EPA disapproves or requires revisions to the treatability study report, in whole or in part, Respondents shall amend and submit to EPA a revised treatability study report which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

F. Task VI: Development, Screening and Comparative Analysis of Alternatives. Respondents shall develop a limited range of waste management options that will be developed, screened, and evaluated as provided in the Workplan. During this analysis of alternatives, Respondents shall provide EPA with the following deliverables:

1. Memorandum on Remedial Action Objectives. Within thirty (30) days of receipt of EPA's baseline risk assessment, Respondents shall submit a memorandum on remedial action objectives.

2. Memorandum on Development, Screening, and Comparative Analysis of Alternatives. Within ninety (90) days of submittal of the memorandum on remedial action objectives, Respondents shall submit a memorandum summarizing the development, screening and comparative detailed analysis of remedial alternatives, including an alternatives array document as described in the Workplan. If EPA disapproves or requires revisions to the Memorandum in whole or in part, Respondents shall amend and submit to EPA a revised Memorandum which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

3. Draft Focused Feasibility Study Report. Within thirty (30) days of EPA approval of the Memorandum on Development, Screening, and Comparative Analysis of Alternatives, Respondents shall submit a draft focused feasibility study report which reflects the findings in EPA's baseline risk assessment. Respondents shall refer to Table 6-5 of the

RI/FS Guidance for report content and format. If EPA disapproves or requires revisions to the draft focused feasibility study report in whole or in part, Respondents shall amend and submit to EPA a revised focused feasibility study report which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments. The report as amended, and the administrative record, shall provide the basis for the proposed plan under CERCLA Sections 113(k) and 117(a) by EPA, and shall document the development and analysis of remedial alternatives.

25. EPA reserves the right to comment on, modify and direct changes for all deliverables. At EPA's discretion, Respondents must fully correct all deficiencies and incorporate and integrate all information and comments supplied by EPA either in subsequent or resubmitted deliverables.

26. Respondents shall not proceed further with any subsequent activities or tasks until receiving EPA approval for the following deliverables: sampling and analysis plan, draft focused remedial investigation report, treatability testing work plan and sampling and analysis plan, and draft focused feasibility study report. While awaiting EPA approval on these deliverables, Respondents shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth in this Consent Order.

27. Upon receipt of the draft FS report, EPA will evaluate, as necessary, the estimates of the risk to the public and environment that are expected to remain after a particular remedial alternative has been completed.

28. For all remaining deliverables not enumerated above in paragraph 26, Respondents shall proceed with all subsequent tasks, activities and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS.

29. In the event that Respondents amend or revise a report, plan or other submittal upon receipt of EPA comments, if EPA subsequently disapproves of the revised submittal, or if subsequent submittals do not fully reflect EPA's directions for changes, EPA retains the right to seek stipulated or statutory penalties; perform its own studies, complete the RI/FS (or any portion of the RI/FS) under CERCLA and the NCP, and seek reimbursement from the Respondents for its costs; and/or seek any other appropriate relief.

30. In the event that EPA takes over some of the tasks, but not the preparation of the RI/FS, Respondents shall incorporate and integrate information supplied by EPA into the final RI/FS report.

31. Neither failure of EPA to expressly approve or disapprove of Respondents' submissions within a specified time period(s), nor the absence of comments, shall be construed as

approval by EPA. Whether or not EPA gives express approval for Respondents' deliverables, Respondents are responsible for preparing deliverables acceptable to EPA.

32. Respondents shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Designated Project Coordinator of such shipment of hazardous substances. However, the notification of shipments shall not apply to any such off-site shipments when the total volume of such shipments will not exceed 10 cubic yards.

(a) The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

(b) The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the focused remedial investigation and feasibility study. Respondents shall provide all relevant information, including information under the categories noted in paragraph 32(a) above, on the off-site shipments, as soon as practical after the award of the contract and before the hazardous substances are actually shipped.

IX. EPA'S BASELINE RISK ASSESSMENT

33. EPA will perform the baseline risk assessment. The baseline risk assessment will be a streamlined human health/ecological risk assessment taking into account the proposed future land use and existing information. Respondents shall support EPA in the effort by providing various information to EPA as outlined above. The major components of the baseline risk assessment include contaminant identification, exposure assessment, toxicity assessment, and human health and ecological risk characterization.

34. EPA will provide, after review of the Respondents' site characterization summary, sufficient information concerning the baseline risks such that the Respondents can begin drafting the focused feasibility study report and the Memorandum on Remedial Action Objectives. This information will normally be in the form of two or more baseline risk assessment memoranda prepared by EPA. One memorandum will generally include a list of the chemicals of concern for human health and ecological effects and the corresponding toxicity values. Another should list the current and potential future exposure scenarios, exposure assumptions, and exposure point concentrations that EPA plans to use in the baseline risk assessment.

The public, including the Respondent, may comment on these memoranda. However, the Agency is obligated to respond only to significant comments that are submitted during the formal public comment period.

35. EPA will make good faith efforts to provide a draft baseline risk assessment to Respondents no later than ninety (90) days after EPA acceptance of the RI report as final. After EPA responds to any significant comments from the Respondents, EPA will release the BRA to the public at the same time it releases the final RI report. Both reports will be put into the administrative record for the Site. EPA will respond to all significant comments on the memoranda or the baseline risk assessment that are resubmitted during the formal comment period in the Responsiveness Summary of the Record of Decision.

X. MODIFICATION OF THE WORKPLAN

36. If at any time during the RI/FS process, Respondents identify a need for additional data, a memorandum documenting the need for additional data shall be submitted to the EPA Project Coordinator within 20 days of identification. EPA in its discretion will determine whether the additional data will be collected by Respondents and whether it will be incorporated into reports and deliverables.

37. In the event of conditions posing an immediate threat to human health or welfare or the environment, Respondents shall notify EPA and the state immediately. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify the EPA Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In addition to the authorities in the NCP, in the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the Workplan, EPA shall modify or amend the Workplan in writing accordingly. Respondents shall perform the Workplan as modified or amended.

38. EPA may determine that in addition to tasks defined in the initially approved Workplan, other additional work may be necessary to accomplish the objectives of the RI/FS as set forth in the Workplan for this RI/FS. EPA may require that the Respondents perform these response actions in addition to those required by the initially approved Workplan, including any approved modifications, if it determines that such actions are necessary for a complete RI/FS. Respondents shall confirm its willingness to perform the additional work in writing to EPA within 7 days of receipt of the EPA request or Respondents shall invoke dispute resolution. Subject to EPA resolution of any dispute, Respondents shall implement the additional tasks which EPA determines are necessary. The additional work shall be completed according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the Workplan or written Workplan supplement. EPA reserves the right to conduct the work itself at any point, to seek reimbursement from Respondents, and/or to seek any other appropriate relief.

XI. QUALITY ASSURANCE

39. Respondents shall assure that work performed, samples taken and analyses conducted conform to the requirements of the Workplan, the QAPP and guidances identified therein. Respondents will assure that field personnel used by Respondents are properly trained in the use of field equipment and in chain of custody procedures.

XII. FINAL RI/FS, PROPOSED, PLAN, PUBLIC COMMENT, RECORD OF DECISION, ADMINISTRATIVE RECORD

40. EPA retains the responsibility for the release to the public of the RI/FS report. EPA retains responsibility for the preparation and release to the public of the proposed plan and record of decision in accordance with CERCLA and the NCP.

41. EPA shall provide Respondents with the final RI/FS report, proposed plan and record of decision.

42. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondents must submit to EPA documents developed during the course of the RI/FS upon which selection of the response action may be based. Respondents shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Respondents must additionally submit any previous studies conducted under state, local or other federal authorities relating to selection of the response action, and all communications between Respondents and state, local or other federal authorities concerning selection of the response action. At EPA's discretion, Respondents may establish a community information repository at or near the Site, to house one copy of the administrative record.

XIII. PROGRESS REPORTS AND MEETINGS

43. Respondents shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

44. In addition to the deliverables set forth in this Consent Order, Respondents shall provide to EPA monthly progress reports by the 10th day of the following month. At a minimum, with respect to the preceding month, these progress reports shall (1) describe the actions which have been taken to comply with this Consent Order during that month, (2) include all results of sampling and tests and all other data received by the Respondent, (3) describe work planned for the next two months with schedules relating such work to the overall project schedule for RI/FS completion and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented

to address any actual or anticipated problems or delays.

XIV. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY

45. All results of sampling, tests, modeling or other data (including raw data) generated by Respondents, or on Respondents' behalf, during implementation of this Consent Order, shall be submitted to EPA in the subsequent monthly progress report as described in Section XII of this Order. EPA will make available to the Respondents validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

46. Respondents will orally notify EPA at least 15 days prior to conducting significant field events as described in the Workplan or sampling and analysis plan. At EPA's oral or written request, or the request of EPA's oversight assistant, Respondents shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) of any samples collected by the Respondents in implementing this Consent Order. All split samples of Respondents shall be analyzed by the methods identified in the QAPP.

47. At all reasonable times, EPA and its authorized representatives shall have the authority to enter and freely move about all property at the Site and off-site areas where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondents and their contractor pursuant to this order; reviewing the progress of the Respondents in carrying out the terms of this Consent Order; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by the Respondents. The Respondents shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Consent Order. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law. All parties with access to the Site under this paragraph shall comply with all approved health and safety plans.

48. The Respondents may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Consent Order under 40 C.F.R. Section 2.20., provided such claim is allowed by section 104(e)(7) of CERCLA, 42 U.S.C. Section 9604(e)(7). This claim shall be asserted in the manner described by 40 C.F.R. Section 2.203(b) and substantiated at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the state without further notice to the Respondents. Respondents agree not to assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

49. In entering into this Order, Respondent waive any

objections to any data gathered, generated, or evaluated by EPA, the state or Respondents in the performance or oversight of the work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Consent Order or any EPA-approved work plans or sampling and analysis plans. If Respondents object to any other data relating to the RI/FS, Respondents shall submit to EPA a report that identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days of the monthly progress report containing the data.

50. If the Site, or the off-site area that is to be used for access or is within the scope of the RI/FS, is owned in whole or in part by parties other than those bound by this Consent Order, Respondents will obtain, or use their best efforts to obtain, Site access agreements from the present owner(s) within sixty (60) days of the effective date of this Consent Order. Such agreements shall provide access for EPA, its contractors and oversight officials, the state and its contractors, and the Respondents or their authorized representatives, and such agreements shall specify that Respondents are not EPA's representative with respect to liability associated with site activities. Copies of such agreements shall be provided to EPA prior to Respondents' initiation of field activities. Respondents' best efforts shall include providing reasonable compensation to any off-site property owner. If access agreements are not obtained within the time referenced above, Respondents shall immediately notify EPA of its failure to obtain access. EPA may obtain access for the Respondents, perform those tasks or activities with EPA contractors, or terminate the Consent Order in the event that Respondent cannot obtain access agreements. In the event that EPA performs those tasks or activities with EPA contractors and does not terminate the Consent Order, Respondents shall perform all other activities not requiring access to that site, and shall reimburse EPA for all costs incurred in performing such activities. Respondents additionally shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables. Furthermore, Respondents agree to indemnify the U.S. Government as specified in Section XXVI of this Order. Respondents also shall reimburse EPA for all costs and attorney fees incurred by the United States to obtain access for the Respondents pursuant to this paragraph.

XV. DESIGNATED PROJECT COORDINATORS

51. Documents including reports, approvals, disapprovals, and other correspondence which must be submitted under this Consent Order, shall be sent by certified mail, return receipt requested, to the following addressees or to any other addressees which the Respondents and EPA designate in writing:

(a) Three copies of documents to be submitted to EPA should be sent to:

Jim Christiansen, Richardson Flat Tailings Project
Coordinator,
Superfund Remedial Section, 8EPR-SR

US EPA, Region VIII,
999 18th Street, Denver, CO, 80202-2466.

(b) Documents to be submitted to the Respondents should be sent to [include number of copies]:

[Name, Title,
Organization,
Street, City, State, Zip Code].

52. On or before the effective date of this Consent Order, EPA and the Respondents shall each designate their own Project Coordinator. There shall only be one Project Coordinator for all Respondents. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondents and EPA shall be directed to the Project Coordinator by mail, with copies to such other persons as EPA, the state, and Respondents may respectively designate. Communications include, but are not limited to, all documents, reports, approvals, and other correspondence submitted under this Consent Order.

53. EPA and the Respondents each have the right to change their respective Project Coordinator. The other party must be notified in writing at least 10 days prior to the change.

54. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's Project Coordinator shall have the authority consistent with the National Contingency Plan, to halt any work required by this Consent Order, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Consent Order shall not be cause for the stoppage or delay of work.

55. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by section 104(a) of CERCLA, 42 U.S.C. Section 9604(a). The oversight assistant may observe work and make inquiries in the absence of EPA, but is not authorized to modify the Workplan.

XVI. OTHER APPLICABLE LAWS

56. Respondents shall comply with all laws that are applicable when performing the RI/FS. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-site, including studies, where such action is selected and carried out in compliance with section 121 of CERCLA.

XVII. RECORD PRESERVATION

57. All records and documents in EPA's and Respondents' possession that relate in any way to the Site shall be preserved

during the conduct of this Consent Order and for a minimum of 10 years after commencement of construction of any remedial action. The Respondents shall acquire and retain copies of all documents that relate to the Site and are in the possession of its employees, agents, accountants, contractors, or attorneys. After this 10 year period, the Respondents shall notify EPA at least 90 days before the documents are scheduled to be destroyed. If EPA requests that the documents be saved, the Respondents shall, at no cost to EPA, give EPA the documents or copies of the documents.

XVIII. DISPUTE RESOLUTION

58. Any disputes concerning activities or deliverables required under this Consent Order, excluding the baseline risk assessment, for which dispute resolution has been expressly provided for, shall be resolved as follows: If the Respondents object to any EPA notice of disapproval or requirement made pursuant to this Consent Order, Respondents shall notify EPA's Project Coordinator in writing of its objections within 14 days of receipt of the disapproval notice or requirement. Respondents' written objections shall define the dispute, state the basis of Respondents' objections, and be sent certified mail, return receipt requested. EPA and the Respondents then have an additional 14 days to reach agreement. If an agreement is not reached within 14 days, Respondents may request a determination by the Director. The Director's determination is EPA's final decision. Respondents shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondents agree with the decision. If the Respondents do not agree to perform or does not actually perform the work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the work itself, to seek reimbursement from the Respondents, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

59. Respondents are not relieved of its obligations to perform and conduct activities and submit deliverables on the schedule set forth in the Workplan, while a matter is pending in dispute resolution. The invocation of dispute resolution does not stay stipulated penalties under this Consent Order.

XIX. DELAY IN PERFORMANCE/STIPULATED PENALTIES

60. For each day that the Respondents fail to complete a deliverable in a timely manner or fails to produce a deliverable of acceptable quality, or otherwise fails to perform in accordance with the requirements of this Consent Order, Respondents shall be liable for stipulated penalties. Penalties begin to accrue on the day that performance is due or a violation occurs, and extend through the period of correction. Where a revised submission by Respondents is required, stipulated penalties shall continue to accrue until a satisfactory deliverable is produced. EPA will provide written notice for violations that are not based on timeliness; nevertheless, penalties shall accrue from the day a violation commences. Payment shall be due within 30 days of receipt of a demand letter from EPA.

61. Respondents shall pay interest on the unpaid balance, which shall begin to accrue at the end of the 30-day period, at the rate established by the Department of Treasury pursuant to 30 U.S.C. Section 3717. Respondents shall further pay a handling charge of 1 percent, to be assessed at the end of each 31 day period, and a 6 percent per annum penalty charge, to be assessed if the penalty is not paid in full within 90 days after it is due.

62. Respondents shall make all payments by forwarding a certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the site name, the EPA Region and SSID NUMBER 08-94, and the EPA docket number for this action, and shall be sent to:

Regular mail:

Mellon Bank
EPA Region VIII
Attn: Superfund Accounting
Post Office Box 360859
Pittsburgh, Pennsylvania 15251-6859

Express Mail:

Mellon Bank
3 Mellon Bank Center
ROOM#153-2713
Pittsburgh, Pennsylvania 15259

or other such address as EPA may designate in writing or by wire transfer to:

ABA-021030004
TREAS NYC/CTR/
BNF-/AC-68011008

Wire transfers must be sent to the Federal Reserve Bank in New York.

63. At the time of payment, each Settling Party shall send notice that such payment has been made to:

Enforcement Specialist, Richardson Flat Tailings Site
U.S. Environmental Protection Agency
STE 500 (8ENF-T)
999 18th Street
Denver, CO 80202-2466

64. For the following major deliverables, stipulated penalties shall accrue in the amount of \$1,000 per day, per violation, for the first seven days of noncompliance; \$3,000 per day, per violation, for the 8th through 14th day of noncompliance; \$5,000 per day, per violation, for the 15th day through the 30th day; and \$25,000 per day per violation for all violations lasting beyond 30

days.

- 1) An original and any revised sampling and analysis plan.
- 2) An original and any revised focused remedial investigation report.
- 3) An original and any revised treatability testing work plan, if required.
- 4) An original and any revised treatability study sampling and analysis plan, if required.
- 5) An original and any revised focused feasibility study report.

65. For the following interim deliverables, stipulated penalties shall accrue in the amount of \$500 per day, per violation, for the first week of noncompliance; \$1,000 per day, per violation, for the 8th through 14th day of noncompliance; \$3,000 per day, per violation, for the 15th day through the 30th day of noncompliance; and \$25,000 per day per violation for all violations lasting beyond 30 days.

- 1) Technical memorandum on modeling of site characteristics, if required.
- 2) Summary of RI data.
- 3) Identification of candidate technologies memorandum.
- 4) Treatability testing statement of work, if required.
- 5) Treatability study evaluation report, if required.
- 6) Memorandum on remedial action objectives.
- 7) Memoranda on development, screening, and detailed comparative analysis of alternatives.

66. For the monthly progress reports, stipulated penalties shall accrue in the amount of \$500 per day, per violation, for the first week of noncompliance; \$800 per day, per violation, for the 8th through 14th day of noncompliance; \$1,000 per day, per violation, for the 15th day through the 30th day; and \$5,000 per day, per violation, for all violations lasting beyond 30 days.

67. Respondents may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XVIII herein. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondents do not prevail upon resolution, all penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondents prevail upon resolution, no penalties shall be paid.

68. In the event that EPA provides for corrections to be

reflected in the next deliverable and does not require re-submission of that deliverable, stipulated penalties for that interim deliverable shall cease to accrue on the date of such decision by EPA.

69. The stipulated penalties provisions do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of the Respondents' failure to comply with this Consent Order, including but not limited to conduct of all or part of the RI/FS by EPA. Payment of stipulated penalties does not alter Respondents' obligation to complete performance under this Consent Order.

70. If Respondents submit any major or interim deliverable to EPA early or on time, EPA will make good faith efforts to provide formal comments no later than one calendar month from the due date of the deliverable. If Respondents submit any major or interim deliverable to EPA after the due date, EPA may not attempt to meet such time restraints for comments.

XX. FORCE MAJEURE

71. "Force majeure", for purposes of this Consent Order, is defined as any event arising from causes entirely beyond the control of the Respondents and of any entity controlled by Respondents, including its contractors and subcontractors, that delays the timely performance of any obligation under this Consent Order notwithstanding Respondents' best efforts to avoid the delay. The requirement that the Respondents exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Consent Order or the financial difficulty of Respondents to perform such work.

72. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure event, Respondents shall notify by telephone the Remedial Project Manager or, in his or her absence, the Director, within 48 hours of when the Respondents knew or should have known that the event might cause a delay. Within five business days thereafter, Respondents shall provide in writing the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Respondents shall exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements shall preclude Respondentss from asserting any claim of force majeure.

73. If EPA agrees that the delay or anticipated delay is attributable to force majeure, the time for performance of the obligations under this Consent Order that are directly affected by the force majeure event shall be extended by agreement of the parties, pursuant to section XXVII of this Consent Order, for a period of time not to exceed the actual duration of the delay caused by the force majeure event. An extension of the time for performance of the obligation directly affected by the force majeure event shall not, of itself, extend the time for performance of any subsequent obligation.

74. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or does not agree with Respondents on the length of the extension, the issue shall be subject to the dispute resolution procedures set forth in section XVIII of this Consent Order. In any such proceeding, to qualify for a force majeure defense, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondents did exercise or are exercising due diligence by using their best efforts to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of paragraph 72.

75. Should Respondents carry the burden set forth in paragraph 74, the delay at issue shall be deemed not to be a violation of the affected obligation of this Consent Order.

XXI. REIMBURSEMENT OF PAST COSTS

76. Within 15 days of the effective date of this Order, Respondents shall remit a certified or cashier's check to EPA in the amount of \$_____, as previously demanded in the RI/FS ~~Special~~ Notice Letter dated _____, together with interest that has accrued thereon at the rate of interest specified for the Hazardous Substances Superfund under CERCLA section 107(a), for all past response costs incurred by the United States in its conduct of response actions at the Site from _____ [date] to _____ [date].

77. Respondents shall make payment by forwarding a certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the site name, the EPA Region and SSID NUMBER 08-94, and the EPA docket number for this action, and shall be sent to:

Regular mail:

Mellon Bank
EPA Region VIII
Attn: Superfund Accounting
Post Office Box 360859
Pittsburgh, Pennsylvania 15251-6859

Express Mail:

Mellon Bank
3 Mellon Bank Center
ROOM#153-2713
Pittsburgh, Pennsylvania 15259

or other such address as EPA may designate in writing or by wire transfer to:

ABA-021030004
TREAS NYC/CTR/
BNF-AC-68011006

Wire transfers must be sent to the Federal Reserve Bank in New York.

78. At the time of payment, Respondents shall send notice that such payment has been made to:

Enforcement Specialist, Richardson Flat Tailings Site
U.S. Environmental Protection Agency
STE 500 (8ENF-T)
999 18th Street
Denver, CO 80202-2466

79. A copy of the check should be sent simultaneously to the EPA Project Coordinator.

XXII. REIMBURSEMENT OF RESPONSE AND OVERSIGHT COSTS

80. Following the issuance of this Consent Order, EPA shall submit to the Respondents on a periodic basis an accounting of all response costs including oversight costs incurred by the U.S. Government with respect to this RI/FS. Response costs may include, but are not limited to, costs incurred by the U.S. Government in overseeing Respondent's implementation of the requirements of this Consent Order and activities performed by the government as part of the RI/FS and community relations, including any costs incurred while obtaining access. Costs shall include all direct and indirect costs, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative agreement costs, compliance monitoring, including the collection and analysis of split samples, inspection of RI/FS activities, Site visits, discussions regarding disputes that may arise as a result of this Consent Order, review and approval or disapproval of reports, costs of performing baseline risk assessment, and costs of redoing any of Respondents' tasks. Any necessary summaries, including, but not limited to EPA's certified Agency Financial Management Systems summary data (SPUR Reports), or such other summary as certified by EPA, shall serve as basis for payment demands.

81. Respondents shall, within 30 days of receipt of each accounting, remit a certified or cashier's check for the amount of those costs. Interest shall accrue from the later of: the date

payment of a specified amount is demanded in writing; or the date of the expenditure. The interest rate is the rate of interest on investments for the Hazardous Substances Superfund in section 107(a) of CERCLA.

82. Respondents shall make payment by forwarding a certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the site name, the EPA Region and SSID NUMBER 08-94, and the EPA docket number for this action, and shall be sent to:

Regular mail:

Mellon Bank
EPA Region VIII
Attn: Superfund Accounting
Post Office Box 360859
Pittsburgh, Pennsylvania 15251-6859

Express Mail:

Mellon Bank
3 Mellon Bank Center
ROOM#154-2713
Pittsburgh, Pennsylvania 15259

or other such address as EPA may designate in writing or by wire transfer to:

ABA=021030004
TREAS NYC/CTR/
BNF/AC-68011008

Wire transfers must be sent to the Federal Reserve Bank in New York.

83. At the time of payment, Respondents shall send notice that such payment has been made to:

Enforcement Specialist, Richardson Flat Tailings Site

U.S. Environmental Protection Agency
STE 500 (SENF-T)
999 18th Street
Denver, CO 80202-2466

84. Copies of the transmittal letter and check should be sent simultaneously to the EPA Project Coordinator.

85. Respondents agree to limit any disputes concerning costs to accounting errors and the inclusion of costs outside the scope of this Consent Order. Respondents shall identify any contested costs and the basis of its objection. All undisputed costs shall be

remitted by Respondent in accordance with the schedule set forth above. Disputed costs shall be paid by Respondents into an escrow account while the dispute is pending. Respondents bear the burden of establishing an EPA accounting error or the inclusion of costs outside the scope of this Consent Order.

XXIII. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS

86. EPA reserves the right to bring an action against the Respondents under section 107 of CERCLA for recovery of all response costs including oversight costs, incurred by the United States at the Site that are not reimbursed by the Respondents, any costs incurred in the event that EPA performs the RI/FS or any part thereof, and any future costs incurred by the United States in connection with response activities conducted under CERCLA at this Site.

87. EPA reserves the right to bring an action against Respondents to enforce the past costs and response and oversight cost reimbursement requirements of this Consent Order, to collect stipulated penalties assessed pursuant to section XIX of this Consent Order, and to seek penalties pursuant to section 109 of CERCLA, 42 U.S.C. Section 9609.

88. Except as expressly provided in this Consent Order, each party reserves all rights and defenses it may have. Nothing in this Consent Order shall affect EPA's removal authority or EPA's response or enforcement authorities including, but not limited to, the right to seek injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages.

89. Following satisfaction of the requirements of this Consent Order, Respondents shall have resolved their liability to EPA for the work performed by Respondents pursuant to this Consent Order. Respondents are not released from liability, if any, for any response actions taken beyond the scope of this Consent Order regarding removals, other operable units, remedial design/remedial action of this Site, or activities arising pursuant to section 121(c) of CERCLA.

XXIV. DISCLAIMER

90. By signing this Consent Order and taking actions under this Consent Order, the Respondents do not necessarily agree with EPA's Findings of Fact and Conclusions of Law. Furthermore, the participation of the Respondents in this Consent Order shall not be considered an admission of liability and is not admissible in evidence against the Respondents in any judicial or administrative proceeding other than a proceeding by the United States, including EPA, to enforce this Consent Order or a judgment relating to it. Respondents retain their rights to assert claims against other potentially responsible parties at the Site. However, the Respondents agree not to contest the validity or terms of this Consent Order, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms.

XXV. OTHER CLAIMS

91. In entering into this Consent Order, Respondents waive any right to seek reimbursement under section 106(b) of CERCLA. Respondents also waive any right to present a claim under section 111 or 112 of CERCLA. This Consent Order does not constitute any decision on preauthorization of funds under section 111(a)(2) of CERCLA. Respondents further waive all other statutory and common law claims against EPA, including, but not limited to, contribution and counterclaims, relating to or arising out of conduct of the RI/FS.

92. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, subsidiary or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site.

93. Respondents shall bear their own costs and attorneys fees.

_. The parties agree that the Respondents are entitled, upon EPA approval of Respondents' certification that all requirements of this Consent have been satisfied, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Order. The "matters addressed" in this Consent Order include the performance of a RI/FS for the tailings impoundment at this Site. The "matters addressed" in this Consent Order do not include the performance of any remedial action or cleanup action determined to be necessary at the tailings impoundment, or any response costs resulting therefrom.

XXVI. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION

94. Respondents shall establish and maintain a financial instrument or trust account or other financial mechanism acceptable to EPA, funded sufficiently to perform the work and any other obligations required under this Consent Order, including a margin for cost overruns. Within 15 days after the effective date of this Consent Order, Respondents shall fund the financial instrument or trust account sufficiently to perform the work required under this Consent Order projected for the period beginning with the effective date of the Consent Order through _____. Beginning _____, and on or before the 15th calendar day of each calendar year quarter thereafter, Respondents shall fund the financial instrument or trust account sufficiently to perform the work and other activities required under this Consent Order projected for the succeeding calendar year quarter.

95. If at any time the net worth of the financial instrument or trust account is insufficient to perform the work and other obligations under the Consent Order for the upcoming quarter,

*Specify that all financial
proofs & notices are to
be provided to
✓ Daniela Golden*

Respondents shall provide written notice to EPA within 7 days after the net worth of the financial instrument or trust account becomes insufficient. The written notice shall describe why the financial instrument or trust account is funded insufficiently and explain what actions have been or will be taken to fund the financial instrument or trust account adequately.

96. (a) Prior to commencement of any work under this Consent Order, Respondents shall secure, and shall maintain in force for the duration of this Consent Order, and for two years after the completion of all activities required by this Consent Order, Comprehensive General Liability ("CGL") and automobile insurance, with limits of \$ 1.0 million dollars, combined single limit, naming as insured the United States. The CGL insurance shall include Contractual Liability Insurance in the amount of \$1.0 million per occurrence, and Umbrella Liability Insurance in the amount of \$2 million per occurrence.

(b) Respondents shall also secure, and maintain in force for the duration of this Consent Order and for two years after the completion of all activities required by this Consent Order the following:

- i. Professional Errors and Omissions Insurance in the amount of \$1,000,000.00 per occurrence.
- ii. Pollution Liability Insurance in the amount of \$1,000,000.00 per occurrence, covering as appropriate both general liability and professional liability arising from pollution conditions.

(c) For the duration of this Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workmen's compensation insurance for all persons performing work on behalf of the Respondent, in furtherance of this Consent Order.

(d) If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor Respondents need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

(e) Prior to commencement of any work under this Consent Order, and annually thereafter on the anniversary of the effective date of this Consent Order, Respondents shall provide to EPA certificates of such insurance and a copy of each insurance policy.

97. At least 7 days prior to commencing any work under this Consent Order, Respondents shall certify to EPA that the required insurance has been obtained by that contractor.

Suggest

to Danielle Golden,
EPA Financial Analyst,
at U.S. Environmental
Protection Agency
Sta. 500 (86WF-7)
999 18th Street
Denver, Co. 80202-2466

98. The Respondents agree to indemnify and hold the United States Government, its agencies, departments, agents, and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondents, their employees, agents, servants, receivers, successors, or assignees, or any persons including, but not limited to, firms, corporations, subsidiaries and contractors, in carrying out activities under this Consent Order. The United States Government or any agency or authorized representative thereof shall not be held as a party to any contract entered into by Respondents in carrying out activities under this Consent Order.

XXVII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

99. The effective date of this Consent Order shall be the date it is signed by EPA.

100. This Consent Order may be amended by mutual agreement of EPA and Respondents. Amendments shall be in writing. Project Coordinators do not have the authority to sign amendments to the Consent Order.

101. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondents will be construed as relieving the Respondent of its obligation to obtain such formal approval as may be required by this Consent Order. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order.

XXVIII. TERMINATION AND SATISFACTION

102. This Consent Order shall terminate when the Respondents demonstrate in writing and certifies to the satisfaction of EPA that all activities required under this Consent Order, including any additional work, payment of past costs, response and oversight costs, and any stipulated penalties demanded by EPA, have been performed and EPA has approved the certification. This notice shall not, however, terminate Respondents' obligation to comply with Sections XVII, XXIII, and XXV of this Consent Order.

103. The certification shall be signed by responsible officials representing the Respondents. The representatives shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." For purposes of this Consent Order, a responsible official is a corporate official who is in charge of a principal business function.

BY: _____
(Respondent) Title

DATE: _____

BY: _____

DATE: _____

(Respondent) Title

BY: _____ DATE: _____

(Respondent) Title

BY: _____ DATE: _____

(Respondent) Title

BY: _____ DATE: _____

Dale Vodehnal, Director
Superfund Remedial Response Program
Office of Ecosystem Protection and Remediation
U.S. Environmental Protection Agency, Region VIII
